

**JOINDER AND SEVERANCE: Rule 13.3, Ariz. R. Crim. P. — Consolidation of offenses for trial when they are “connected together in their commission” under Rule 13.3(a)(2) and (c)**

**Revised 11/2009**

Rule 13.3, Arizona Rules of Criminal Procedure, provides:

a. Offenses. Provided that each is stated in a separate count, 2 or more offenses may be joined in an indictment, information, or complaint, if they:

- (1) Are of the same or similar character; or
- (2) Are based on the same conduct or are otherwise connected together in their commission; or
- (3) Are alleged to have been a part of a common scheme or plan.

b. Defendants. Two or more defendants may be joined when each defendant is charged with each offense included, or when the several offenses are part of a common conspiracy, scheme or plan or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.

c. Consolidation. If such offenses or such defendants are charged in separate proceedings, they may be joined in whole or in part by the court or upon motion of either party, provided that the ends of justice will not be defeated thereby.

Offenses may be consolidated for trial under Rule 13.3(b) and (c) when the several offenses are part of a common conspiracy, scheme or plan or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others. Offenses are “closely connected” within the meaning of Rule 13.3(b) when evidence of one crime would be admissible in a separate trial for the other crime. For example, in *State v. Williams*, 183 Ariz. 368, 904 P.2d 437 (1995), the defendant Williams killed his former girlfriend Rita, then told his current girlfriend, Michelle, that she should tell the police that Williams was home with her when Rita was shot. Michelle did so. About two weeks later, Williams

told Michelle that he had killed Rita and gave her details about the murder. Michelle did not immediately go to the police.

About five weeks after killing Rita, Williams went to a convenience store and accused the clerk, Norma, of spreading rumors that he had killed Rita. Williams robbed Norma at gunpoint and then told her to get into his car so that they could go out to the desert to talk. When Norma refused to get into Williams's car, Williams shot Norma; however, Norma survived and identified Williams as her attacker. Williams was indicted for armed robbery and attempted murder of Norma. After Williams shot Norma, Michelle went to police and told them about Williams's confession to her. Williams was subsequently indicted for murdering Rita. On the trial court's own motion, and over the defense's objection, the trial court consolidated the two cases for trial. The jury found Williams guilty of all counts and the trial court sentenced him to death. *Williams*, 183 Ariz. at 375, 904 P.2d at 444.

On appeal, Williams argued that the trial court erred in consolidating the cases for trial. The Arizona Supreme Court held that the cases were properly consolidated as "otherwise connected together in their commission" under Rule 13.3(a)(2). The Court reasoned that most of the evidence was admissible to prove either crime. Because of Williams's statement that he shot Norma in part because he believed she was implicating him in Rita's murder, evidence of the armed robbery/attempted murder was relevant to show Williams's consciousness of guilt on the murder charge. Evidence of the armed robbery was also admissible to support the credibility of Michelle's testimony. Michelle explained her previous inconsistent statements to police by saying that she initially lied to protect Williams because she was afraid of him. However, Michelle said, when Williams shot Norma, Michelle went to police because she feared that if Williams were released, he would try to kill her next. "Because evidence of the attempted

murder supports Michelle's credibility as a witness, it was relevant to the murder case." *Williams*, 183 Ariz. at 376, 904 P.2d at 445. Finally, evidence of the murder was relevant to show Williams's motive for shooting Norma because "proof of the murder tended to prove that a desire to silence Norma motivated defendant to shoot her." *Id.* The Court concluded that because most of the evidence was admissible to prove both cases, consolidation was appropriate.

Similarly, in *State v. Befford*, 157 Ariz. 37, 754 P.2d 1141 (1988), Befford escaped from custody while at the courthouse. Befford went to Ramirez's house and asked to use the telephone; when Ramirez let him in, Befford robbed him and stole his rifle. Then, using Ramirez's rifle, Befford robbed a convenience store, forced the clerk, Brown, to take him to her car, and drove Brown out of town, letting her out in a field. Befford was charged with three sets of crimes arising from the escape, the Ramirez robbery, and the Brown robbery. The trial court granted the State's motion to consolidate the trials on all three sets of offenses, and Befford was convicted of all charges. On appeal, he argued that the cases should not have been consolidated. He maintained that the escape was complete when he left the courthouse and that the two later sets of crimes were unrelated. The Arizona Supreme Court found no error, citing *State v. Via*, 146 Ariz. 108, 115, 704 P.2d 238, 245 (1985). *Via* held that consolidation is proper where the evidence relating to one set of charges would be admissible on another set "as part of the complete picture." The Court reasoned that the evidence of each of the crimes was admissible to show the motive for the other crimes:

In this case, evidence of defendant's escape from the courthouse was relevant to his motive for committing the crimes against both Ramirez and Brown. Defendant was apparently in search of three things to remove himself as far as possible from the scene of the first crimes: he needed a vehicle, a weapon, and money. He sought all three from both

victims and succeeded in obtaining a rifle from Ramirez, a car and cash from Brown. In addition, evidence of the rifle stolen from Ramirez was relevant to show how the crimes against Brown took place. Defendant was pointing Ramirez's rifle at Brown when he entered the convenience store where she worked. He used the weapon as an actual or implied threat as he forced her to empty the cash register and then accompany him out of Tucson.

*Befford*, 157 Ariz. at 40, 754 P.2d at 1144. Thus, the offenses were properly consolidated for trial.

However, in *State v. Garland*, 191 Ariz. 213, 953 P.2d 1266 (App. 1998), the court of appeals found that the offenses should not have been joined for trial. In that case, Garland met a news reporter and photographer at a Phoenix motel while they were researching a human-interest story. When the photographer made a comment that angered Garland, he drew a gun from his waistband and the newspapermen fled, leaving a camera and tripod, which Garland took. The newspapermen called police and described Garland to them, including the fact that he was wearing a baseball cap with a "CR" insignia. Some two and one-half hours later, a car pulled into a parking lot in the area of the motel and a man matching the description the newspapermen had given approached the car, pulled a gun from his waistband, and demanded that the driver give him a ride. Garland told the driver to pull over to buy some drugs and demanded the driver's jewelry and money. A struggle ensued and the driver was shot. The driver pushed Garland out of the car and drove away to find help. A baseball cap with a "CR" insignia was found in the car, along with Garland's fingerprints.

At trial, the State brought the charges involving the theft of the equipment and the attack on the driver together. The trial court denied Garland's motion to sever the cases, finding that joinder was proper "because the incidents were of same or similar character, and because the offenses were connected in their

commission such that they could be considered part of a common scheme or plan.” *Garland*, 191 Ariz. at 215 ¶ 5, 953 P.2d at 1268. The trial court also found that evidence of the first incident would have been admissible in a separate trial of the second. *Id.*

The court of appeals disagreed, finding that the trial court abused its discretion in not severing the offenses for trial. The court found that the offenses were not sufficiently similar to justify joinder, stating that the similarities did not show that the *crimes* were similar, but only that the *man or men who perpetrated the crimes* were similar. *Garland*, 191 Ariz. at 218 ¶ 23, 953 P.2d at 1271. The court of appeals also found that “the crimes and the common elements of proof of each were independent of the other.” *Id.* at 217 ¶ 14, 953 P.2d at 1270. The court of appeals rejected the claim that the offenses were part of a “common scheme or plan,” reasoning that under *State v. Ives*, 187 Ariz. 102, 106-07, 927 P.2d 762, 766-67 (1996), no “common scheme or plan” existed because there was no proof of any specific plan connecting the charged crimes. The court reversed the convictions and remanded the case to the trial court.